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Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

Concluding observations on the fourth periodic report of Cyprus

Addendum

Information received from Cyprus on follow-up to the concluding observations*

[Date received: 20 May 2015]

Part I – Introduction

1. The present document provides follow-up information by the Republic of Cyprus to the recommendations contained in paragraphs 7 (d), 11 (a), 17 (c) and 19 of the concluding observations on the fourth periodic report of Cyprus (2001–2011), (CAT/C/CYP/CO/4), pursuant to paragraph 26 thereof.

2. Like the fourth periodic report of Cyprus (2001–2011) (CAT/C/CYP/4), the present document was prepared by the Law Commissioner of the Republic who, pursuant to a Decision of the Council of Ministers, is entrusted with ensuring compliance of Cyprus' reporting obligations under the international human rights instruments. All information for the preparation of the present document was provided by the Ministry of Justice and Public Order, as the competent Ministry for the purposes of the CAT, through the Police and Prisons Department, and the Ministry of Interior having competence for the specific information requested (i.e refugee determination process - Asylum Service). The Ministry of Labour, Welfare and Social Insurance was also consulted on specific matters (i.e minors-Welfare Services).

3. The present document will be posted on the website of the Office of the Law Commissioner upon submission.

* The present document is being issued without formal editing.

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Part II – Follow-up information to the recommendations contained in paragraphs 7 (d), 11 (a), 17 (c) and 19

Reply to the issues raised in paragraph 7 (d) of the concluding observations

Police

4. The Law that provides for the Rights of Persons who are Arrested and Detained, [L.163(I)/2005] was amended in 2014 for the purposes of harmonization with Directive 2012/13/EU of the European Parliament and of the Council on the right to information in criminal proceedings. In this respect, additional rights were included, and/or existing ones were better clarified and enhanced, such as obligation to provide information as to the right of free legal aid, the right to remain silent, the right of interpretation and translation and the right to have access to the materials of the case.

5. Furthermore, the Police Standing Order 5/3-"Treatment of Detainees", which includes all rights of detained persons and responsibilities of the Police members, is available for any member of the Police on the Internal Police Website (portal). Further, these rights and responsibilities are taught at the Cyprus Police Academy to all recruits in Lesson 17: "Rights and Treatment of Detainees". Additionally, the Cyprus Police Academy is conducting specialized training programmes, which include, inter alia, topics on human rights ("Respect and Protection of Human Rights" and "Responsibilities of Persons in charge of Police Detention Centers"). Specifically, there is the Sergeants' Programme, the Programme to Combat Racial Discrimination, Racism and Xenophobia, the Training Program for Special Constables, who come into contact with the public and the Senior Chief Inspectors, Chief Inspectors, Sergeants and Police Officers Training Program regarding the new approach in policing. In the light of the 2014 amendment of Law 163(I)/2005, the Police is launching on 28 and 29 May 2015, a Training Program at the Cyprus Police Academy, which aims at a specific group of Police officers associated with the treatment of detainees. This programme includes topics relating to human rights of detainees and the obligations of the Police members deriving from the relevant laws and the Police Standing Orders. It is worth noting that, within this programme, a member of the Office of the Commissioner for Administration (hereinafter "the Ombudsman"), will lecture on issues relating to human rights of detained persons.

6. The Chief of Police issues regularly circular letters to all the Police members, stressing the importance that must be attributed by them to the protection of human rights and giving guidelines as to the mode of operation, in order to avoid any possible violations of human rights.

7. Moreover, there are several mechanisms for the investigation of allegations of Police misconduct: the Independent Authority for the Investigation of Allegations and Complaints against the Police, criminal or/and disciplinary procedures, the Attorney- General, the Ombudsman, the Commissioner for Children's Rights, and the Police Professional Standards, Audit and Inspection Directory. The mission of these mechanisms, is the objective investigation of complaints, as well as the reduction or/and the elimination of any inappropriate behaviour by the Police members.

8. In this Framework, the Chief of Police has issued circular letters (dated 2.7.2014, 17.9.14 and 10.3.15) informing Police members that the Attorney General, after having examined various criminal interrogations and administrative investigations concerning allegations of abuse and / or exercise of violence by Police members, as reported by citizens, gave instructions that when such allegations are reported, he must be informed promptly (within a maximum of 24 hours), so as to enable him to exercise his powers, which includes the power to assign independent criminal investigators to examine the

allegations. Furthermore, the Independent Authority for the Investigation of Allegations and Complaints against the Police which has competence to act *ex-proprio motu*, must also be informed, within 24 hours.

9. Moreover, the Attorney General gave the following instructions as far as the procedures to be followed by the Police are concerned:

- The previous practice of the Police to perform administrative or criminal investigation in such cases is terminated.
- Whenever a person files a complaint of having been abused or subjected to violence by Police members, he/she must be examined by a forensic pathologist, who submits a relevant report on the condition of the said person. This report is forwarded to the Attorney General.
- If such complaint is filed by a foreign national, the Head of the Aliens and Immigration Service is also informed, so that no deportation proceedings can be executed.

Prisons Department

10. As regards the Prisons Department, the newly appointed Prison Director operates on a human rights based approach in an effort that all procedures/actions are in line with United Nations human rights instruments and norms, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment standards and European Prison Rules. All forms of ill-treatment are unacceptable and must be severely sanctioned. For the first time, Prison staff were suspended from duty and all allegations of physical ill-treatment by the inmates, are investigated by the Police, the Ombudsman or independent criminal investigators appointed by the Attorney General. Whenever the Director is informed of such allegations she promptly informs the Police for investigation. The previous practice of investigations being carried out within the Prison's Department has been terminated.

11. The new Director, in an effort to prevent ill treatment and torture, established new procedures to control and filter the discretionary powers of the Prison staff, and opened channels of communication of the inmates with her Office and with the outside world:

- The Director has established an office for the requests of the inmates and their relatives. A member of the Director's office receives the requests, reviews them and directly referrers them to the Director, so that the inmates have another channel of communication with the Director.
- The Director with the expert from the Minister's Office, occasionally visit all areas of the Prison establishments and meet in person with the inmates.
- As from December 2014, the Director has increased the monthly visits to inmates from 4 to 10, so that the inmates have the opportunity to meet every three days with relatives and friends. She also opened the phone booths from 0800–1800, so that inmates have free access on a daily basis to contact with the outside world.
- As from January, 2015, she allowed the use of Skype in order to help inmates maintain links with their families, giving priority to inmates not receiving visits from family and/or friends because of distance, lack of transport, lack of funds, disability or any other valid reason and to inmates with young children.
- She further established a procedure for filtering and controlling all the discretionary powers of the Prison staff by issuing a Prison Standing Order, prohibiting Prison staff to take any action against inmates, without first informing the Director by a written report.

12. As regards human rights training of the Prison staff, the Director has made great efforts to enhance and upgrade their training programmes and in this respect she liaises with universities, the National Offender Management Service of the United Kingdom of Great Britain and Northern Ireland, the Cyprus Academy of the Public Administration, Cyprus International Institute of Management, human rights institutes, the Ombudsman, etc. Human rights, prevention of torture, ill treatment and punishment, etc., constitute a major part of such training where the concepts of torture and ill treatment, the Committee against Torture etc., are analysed, such as:

- Convention against Torture – obligations;
- Istanbul Protocol – legal aspects of the investigation of torture;
- Investigation of torture;
- Reviewing of the basic aspects of the medical examination of victims including visual documentation and tools that will convey a general understanding of the differences between diagnostic and forensic approaches;
- Documentation of torture evidence (photos, testimonies, medical and forensic evidence);
- Other issues related to the identification of tortured persons deprived of their liberty, investigation and documentation of such cases.

13. As from November 2014, when this was introduced, more than 250 Prison staff (that is, the total of the staff in action) have participated in several courses, seminars, programs etc., on human rights issues, prevention of ill treatment, diversity, treatment of inmates etc.

Reply to the issues raised in paragraph 11 (a) of the concluding observations

14. The process for the identification of possible victims of torture is clearly defined and provided for in the Refugees Law 2000, [L.6(I)/2000,as amended]. If an asylum seeker claims, either in the application for international protection or during the examination of the application, to have been subjected to torture, he/she is referred to a specialized body trained in the examination and identification of victims of torture, in accordance with the provisions of the Istanbul Protocol. Even when the applicant does not explicitly claim to have been subjected to torture, but the examining officer detects possible psychological signs or otherwise suspects that the person may be a victim, the applicant is referred for examination, after his/her consent.

15. To this end, a number of seminars and trainings for to practitioners who may come in contact with possible victims of torture, were held.

16. Furthermore, victims of trafficking, as well as victims of torture, are referred to psychological and health services. All special needs are taken into consideration during the examination of the application.

17. In the context of harmonization with the new asylum acquis (Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants of international protection (recast) – Article 22), the Asylum Service is in the process of setting up a more effective mechanism for the early identification of vulnerable applicants (including possible victims of torture and trafficking), in order to provide them with special reception conditions and special procedural guarantees.

Reply to the issues raised in paragraph 17 (c) of the concluding observations

18. Detention of illegal immigrants is used as a measure of last resort. It is applied for the shortest period of time possible and only when there are no other less coercive measures available, which could be applied for the effective return of the illegally residing immigrant. What is more, detention may only be maintained for reasons of preparing the return process and only for as long as removal arrangements are in progress.

19. These matters are specifically and clearly regulated by the Aliens and Immigration Law, CAP.105 (as amended) and are fully aligned with Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals.

20. In addition, the relevant decision for the detention of an illegally residing person is submitted in writing, clearly stating the reasons, and is also communicated to the person concerned. However, prior to the issuing of the deportation order, the person concerned is given the option to depart voluntarily within a reasonable timeframe, depending on the individualities of each case (children in school, medical conditions, other humanitarian reasons, etc.).

21. The Government is making systematic efforts in order for the repatriation orders to be executed as soon as possible with a view to limit the detention period. In cases where the return decision cannot be effectively implemented, either due to lack of co-operation by the person concerned or due to delays in obtaining the necessary documents, the person is released on terms, such as the submission of financial guarantee, the submission of his/her travel documents and presentation at the Police station in regular intervals.

22. Even though the detention period may be extended, in cases for example when the person concerned has previously committed a serious criminal offense and/or when there is a reasonable prospect of successful removal, no person is held in detention for a period longer than 18 months.

23. In order to ensure proper implementation of this provision, the Minister of Interior reviews detention orders every two months, based on a list submitted by the Aliens and Immigration Service (Ministry of Justice and Public Order), which includes the names and a short description of the personal circumstances of each detainee, the duration of the period he/she is being detained and recommendations regarding his/her release.

24. All return decisions are made with full respect to the principle of non-refoulement according to the 1951 Convention relating to the Status of Refugees as well as Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and Article 18 of the Charter of Fundamental Rights of the European Union.

25. Last, but not least, a person awaiting his/her return has the right to challenge this decision before the Supreme Court of Cyprus. In 2012, the Legal Aid Law was amended [L.8(I)/2012] in order to expand the legal aid scheme, so as to cover also judicial proceedings for returning illegally staying third-country nationals when filing a recourse before the Supreme Court under Article 146 of the Constitution against a return decision, a removal decision/deportation order and a decision on entry ban. The condition for granting legal aid is the likelihood of success of the recourse, which is compatible with the abovementioned Return Directive.

Reply to the issues raised in paragraph 19 of the concluding observations

26. Both the Aliens and Immigration Law, CAP.105 (as amended), as well as the Refugees Law, 2000 [L.6(I)/2000, as amended], clearly stipulate that the best interest of the child shall be the primary consideration in order to apply their provisions. More specifically, by virtue of the Aliens and Immigration Law, unaccompanied minors and

single parents cannot be detained. Additionally, the Refugees Laws provide that children asylum seekers are not detained under any circumstances. It is noted, that no detention order has been issued for a minor, certainly in the last year.

27. Furthermore, a policy decision was issued, in order to enhance effective cooperation of all government Services concerned, with a view to eliminating incidents of separation of children from their mother or single parent.

28. In particular, a Ministerial Committee decided in May 2014 that, in cases of parents of minors, who both are detected to reside illegally in Cyprus, the parent is not put in detention, but is given a letter by the authorities setting a date of voluntary departure. Until that date, the parent is allowed to reside with his/her child, subject to certain terms, such as reporting regularly to a Police station, submitting his/her travel documents and/or a financial guarantee.

29. When a person entering the Republic, alleges to be a minor, such person enjoys all relevant services on the assumption that she/he is a minor. According to article 7(4) (c) of the Refugees Law, 2000, [L.6(I)/2000], the detention of a minor who has applied for asylum is prohibited. The minor will be placed under the care of the Director of the Social Welfare Services and during the process of the examination of the asylum application, if there is reasonable doubt as to his/her age, the minor will go through the process of age verification. Furthermore, a person claiming to be a minor is not detained during the age verification process.

30. As regards the treatment of unaccompanied minors:

(a) The Commissioner for Children's Rights issued in November 2014 a Position Paper in relation to the primary treatment of unaccompanied minors, which was the result of investigating complaints, consultation with non-governmental organizations and interviews with unaccompanied minors, by which she makes recommendations to the competent authorities, so that the rights of these children would be safeguarded as provided by the Convention on the Rights of the Child. This Position Paper was communicated to all competent Ministers, heads of competent Departments, members of competent Parliamentary Committees, the National Human Rights Institution, the Office of the United Nations High Commissioner for Refugees in Cyprus and relevant non-governmental organizations.

(b) A consultation was conducted at the Office of the Ombudsman on 20 April 2015, in order to discuss the manner of implementing the recommendations, included in the "Report of the National Human Rights Institution (HRI) regarding the treatment of unaccompanied minors until their care is undertaken by the state", (dated 29.5.2014). Guidelines will be issued by the Ombudsman Office in cooperation with the relevant departments/ Services, as to the procedures to be followed in relation to treatment of unaccompanied minors or persons alleging to be minors.